

TOWN OF MOUNT AIRY BOARD OF APPEALS

FINDINGS AND DECISION

CASE NO. MA-A-10-05 EXTENSION OF EXPIRATION OF SPECIAL EXCEPTION JULY 17, 2023

Applicant(s): MB Canterbury Group of Maryland, LLC
Michael Berman Enterprises, LLC

Location: Proposed SW Barker Boulevard, accessed by Promenade Lane off
Merridale Boulevard, Mount Airy, MD 21771

Current Zoning: R2-Low Density Residential

Acreage: 5.25 acres approximately

Current Use: Vacant

Proposed Use: Elderly Condominiums

WHEREAS, Applicants sought approval of a special exception to allow elderly condominium units as a continuation of the Senior Housing Development at Wildwood Park Section VII to be located directly adjacent to the elderly housing development of Wildwood Park Sections III, VI, and V pursuant to application for such dated June 15, 2010; and

WHEREAS, on August 31, 2010 the matter of the special exception application came before the Town's Board of Appeals pursuant to the Town Code §§ 112-60B and 112-62; and

WHEREAS, the Board of Appeals, after considering all testimony and exhibits, made the following findings and determinations:

1. That Applicants met the burden of proof as to each of the general and specific standards for granting the special exception and specifically that:
 - a. The proposed use, including its nature, intensity and location, is in harmony with the intent of the Town Master Plan and the orderly and appropriate development of the district.

- b. That adequate water supply, sewerage disposal, storm drainage and fire and police protection are or can be provided for the use.
- c. That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences.
- d. That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets.
- e. That there would be no adverse impact to neighboring property that would be unique as compared to other properties located within the R3 Zoning District
- f. That the proposed concept plan complies with the following:
 - i. Maximum permitted density is 12 units per acre.
 - ii. Minimum setback requirements: Front: 35 feet; Side: 20 feet; Rear: 35 feet.
 - iii. Maximum building coverage: 25% of the total lot area.
 - iv. Two parking spaces per unit.
 - v. An elevator will be provided for all units not accessible from the same level as the exterior entrance. All common areas and individual units will be handicap accessible.
 - vi. The primary road providing access to the site is a collector or higher classification road.
 - vii. Covenants will be developed to require that:

[1] Occupancy be restricted to persons 55 years of age or older, or who are permanently totally disabled, provided in that instance that at least one resident be 55 years of age or older. For purposes of this section, "permanently totally

disabled" means a disability (mental or physical) which has existed or is expected to last for at least one year, and is of a nature that would meet the definitions of total disability under the Federal Social Security Program or permanent total disability as defined for purposes of Maryland Workers' Compensation Law.

[2] All exterior areas and improvements therein must be managed under a common maintenance agreement, (excluding areas to be dedicated to or maintained by the Town).

2. That the Applicants be and are therefore granted a special exception for the Location for elderly housing, apartments and condominiums pursuant to §§112-26C.(5) and 112-62F.(16) subject to the following conditions:
 - a. Rezoning of the property with the adoption of the Town's new Master Plan to the R3 District zoning classification
 - b. All Town and County requirements are met at the time of site plan review; and
 - c. All general standards set forth in the Town Code, §112-62E. and specific requirements set forth in §112-62F.(16) are met at site plan review.

WHEREAS, Applicant failed to secure a building permit, or use certificate, within 12 months from the date of authorization of the Special Exception, or August 31, 2011, as required by § 112-62A.(2); and

WHEREAS, Applicants sought a request that the Board of Appeals extend the expiration of the Special Exception to allow for the completion of the Comprehensive Master Plan and required rezoning of the subject property; and

WHEREAS, on August 1, 2011 the matter of the extension of the expiration of the approved special exception came before the Town's Board of Appeals pursuant to the Town Code § 112-62A.(2); and

WHEREAS, the Board decided due to the uncertain economic environment, the extension for the Special Exception for Wildwood Park VII would be extended for thirty-six months to permit the developer to go through the Town Master Plan process, obtain R-3 residential zoning on this property, and secure adequate water supply for the subject development; and

WHEREAS, due to circumstances beyond the Applicant's control, Applicant was unable

to secure a building permit, or use certificate, by the date of authorization of the thirty-six month extension of the Special Exception, or August 31, 2014, as required by § 112-62A.(2); and

WHEREAS, on July 28, 2014 the matter of the extension of the expiration previously extended until August 31, 2014 of the approved special exception came before the Town's Board of Appeals pursuant to § 112-62A.(2); and

WHEREAS, the Board decided that the special exception would be extended for an additional thirty-six months to allow the Town Master Plan process to be completed, obtain R-3 residential zoning on this property, and secure adequate water supply for the subject development; and

WHEREAS, the Town Master Plan was adopted in November 2014 allowing the Applicant to obtain R-3 residential zoning on the property pursuant to the special exception approval; and

WHEREAS, due to the lack of available water capacity, the project was not able to move forward to Concept Plan review in front of the Town of Mount Airy Planning Commission until early 2016; and

WHEREAS, in August 2016 the Planning Commission granted conditional approval of the concept plan for the development of 60 apartment or condominium units on the subject property; and

WHEREAS, the Planning Commission approved the water and sewer allocations for the projected usage to serve the development project; and

WHEREAS, Applicant submitted the final site development plan submission for Wildwood Park, Section VII for review by Town and County agencies in preparation for presentation to the Planning Commission; and

WHEREAS, the project was not yet able to secure a building permit or use certificate as required by the Town Code Section 112-62A.(2); and

WHEREAS, to prevent the expiration of the approved special exception, Applicant again sought an extension of the special exception approval for an additional three years through July 31, 2020; and

WHEREAS, on July 18, 2017, the Board granted an extension of the special exception approval for an extension of the special exception approval for an additional three years, through July 31, 2020, to allow the Applicant to secure approval of the Final Site Development Plan and a building permit or use certificate as required by the Town Code, § 112-62A.(2); and

WHEREAS, while the final development plans remained under review by Town and County agencies, especially with the County regarding stormwater management criteria

allegedly related to the condition sought by the Planning Commission to install an access drive onto Ridge Avenue the project was not likely to secure a building permit or use certificate as required by the Town Code, § 112-62A.(2) as Applicant approached the July 31, 2020 expiration date; and

WHEREAS, on or about April 21, 2020, Applicant therefore requested a hearing and another three (3) year extension of the special exception approval; and

WHEREAS, the July 31, 2020 expiration of the special exception approval was extended by the Town Council to January 1, 2021 by enacting Ordinance 2020-18, which extended all special exceptions expirations that had expired, or were due to expire, between March 16, 2020 through January 1, 2021 due to the COVID-19 pandemic of 2020; and

WHEREAS, on December 16, 2020, the Board convened a public hearing to determine whether to approve the request for extension wherein the Board heard from counsel allegedly retained by certain neighboring or nearby property owners, and also heard from counsel for Applicant, and wherein the Town Zoning Administrator's Staff Report with all attachments were entered into the record; and

WHEREAS, at its hearing on December 16, 2020, the Board of Appeals granted an extension of the special exception approval for Wildwood Park, Section VII for an additional three (3) years through July 31, 2023; and

WHEREAS, on May 24, 2023, as the July 31, 2023 expiration approached, Applicant requested another three (3) year extension; and

WHEREAS, the request for extension was brought before the Board of Appeals in a public hearing on July 17, 2023; and

WHEREAS, Town Staff issued a report making a favorable recommendation recommending that the Special Exception be extended for one (1) year through July 31, 2024 to allow the Applicant to move forward with a final submission or work toward a revised final development plan; and

WHEREAS, the Staff Report with all attachments, including the May 24, 2023 request for extension, are attached hereto as Exhibit 1; and

WHEREAS, the following members of the Board of Appeals were present: Peter Helt, Chair; Wade Gallagher; Patty Washabaugh; Roxanne Hemphill and Sean Kelly, alternate, who voted in absence of Board of Appeals member Judi Stull; and

WHEREAS, Board of Appeals member Judi Stull was absent; and

WHEREAS, witnesses were duly sworn; and

WHEREAS, Applicant was represented by counsel, John T. Maguire; and

WHEREAS, as a preliminary matter, Mr. Maguire, on behalf of Applicant, objected to the participation in the hearing by Board of Appeals member Wade Gallagher because during the remote hearing on December 16, 2020, Mr. Gallagher, as a private attorney and before he became a member of the Board of Appeals, represented some residents of Wild Wood Park in opposing the request for extension for which application was made at that time; and

WHEREAS, in response Board of Appeals member Gallagher stated that he intended to participate fully I the hearing, that he represented individual residents of Wild Wood Park for compensation, but that representation was at an end, that he had no financial interest in the property or the outcome of the hearing; and

WHEREAS, Mr. Maguire made a presentation to the Board in favor of the request for extensions on behalf of his client and Applicant and made the following points, which were also made in the May 24, 2023 request for extension, and Michael Berman as Managing member of the Applicant was present as well and in part in response to questions from Board members in sum made the following points:

In 2010, the initial application for the special exception was approved by the Board of Appeals and was “tried on the merits”. The law is exactly the same now as it was back then. The character of the neighborhood is the same. Wild Wood Park, Section VII is a logical extension of the existing Wild Wood Park retirement community.

For the last six years, the Property was rezoned through the last Town Master Plan process, water capacity became available in 2016, review of the concept plan, which had previously been submitted, resumed, the concept plan was conditionally approved in 2016, but the processing of the final site plan has been held up due to the application of stringent stormwater management criteria related to the condition sought by the Planning Commission to stall an access drive onto Ridge Avenue, the Applicant participated in a joint meeting of Town and County officials on April 30, 2019 to explore possible solutions which have not yet been resolved, the proposed us for elderly housing at this site remains consistent with the adjacent development and the criterial in the Town Code underlying the zoning approval of the special exception has not changed. The County Stormwater Management regulations has really set the project back. The final plan is still in design and the Applicant is conferring with different experts as to how to meet these regulations, in part because of the Planning Commission’s condition to site plan approval that the development connect to Ridge Avenue, which requires, more impervious run off.

Mr. Breeding’s staff report speaks for itself. However, one year is not very long, and a longer extension is requested. Mr. Berman would love to get back started again on the project, but a lot still has to happen. Interest rates being are also not helpful, at this time, it was noted. Applicant asks for another 3 year extension.

In response to the question as to what progress or activity has taken place in the last three years, the response was that the development still awaited stormwater management approval from the County. There was a joint meeting among the Applicant, County and Town Staff in April 2019, and there have been seven separate submissions to the County for stormwater management approval. The Applicant was at one point led to believe that the development would get stormwater management approval, and stressed that it was the condition imposed by the Town Planning Commission to add an entrance that has required more stormwater management review. It is in the best interest of the Town to grant the extension in order to give a chance for decisions to be made.

WHEREAS, Roger Dahlman, 1001 Promenade Lane, who was present, testified with opportunity for cross examination:

The proposed 55 years of age and older proposed development is not compatible with the rest of Wild Wood Park, which is essentially made up of retirees, and that therefore the previous grant of a special exception was a mistake. In addition, increased traffic is another reason to deny the request for extension because the new development will have residents in it that will be traveling to and from work. He urges denial of the request for extension.

WHEREAS, Councilman Karl Munder, as a resident, commented that it may be time to restart the special exception process; and

WHEREAS, the following points were made in discussion among Board of Appeals members:

The Town cannot just continue to give extensions over and over. The project has been at a standstill for several years. Perhaps the Board should make the extension for two (2) years, and if at the end of two (2) years, progress is still at a standstill, it may be time to restart the process. It appears that the last time anything was done on this development was 2019. If an extension is granted, the Board of Appeals or Town should probably get more timely updates. Perhaps giving a one (1) year extension is appropriate and see where matters stand at that point.

NOW, THEREFORE, on motion to approve the request for extension of the special exception for one (1) year, the Board of Appeals voted 4 votes in favor (Helt, Hemphill, Kelly, and Washabaugh), zero (0) opposed, and one (1) abstention (Gallagher) to approve an extension of the special exception for elderly housing for the Wild Wood Park, Section VII development for one (1) year through July 31, 2024, as recommended in the Staff Report (Exhibit 1).

ATTEST:

John Breeding,
Zoning Administrator
Town of Mount Airy

Peter Helf, Chair
Town of Mount Airy
Board of Appeals

Approved as to form and legal sufficiency on this ____ day of _____, 2023.

Thomas V. McCarron, Town Attorney

**Town of Mount Airy, Maryland
Board of Appeals
Staff Report**

July 17, 2023

Request for Variance of the LC Zoning Code Due to Hardship

**CASE MA-BOA-2023-04
South Side Plaza**

Applicant: TABASSEM REALITY, LLC

Location: South Main Street

Zoning: LC – Limited Commercial

STAFF COMMENTS:

The Applicant requests a variance to the LC Zoning under Code section §112-37 as submitted. The four parcels are located along South Main Street, just South of the Md. Rt. 144 intersection and south of address 1502 S. Main Street. The four parcels combined look like the shape of a flag; see attached maps for location.

The attached maps show that parcels to the North are zoned LC – Limited Commercial and CC – Community Commercial. The parcels directly to the South are zoned LC, with parcels to the East on the other side of South Main Street are zoned CC. The Parcels to the West adjacent to this parcel are zoned R-3 Residential.

The applicant's requests have some perspectives that might be worth consideration. The relocation of a single building toward the front of the property does create an increased buffer area away from the residential properties to the West. This would also protect the natural tree buffer, as described by the applicant.

The variance request to move toward allowing the combination of the three separate buildings into a single three-story building does have some merit. This would allow the structure to be located close to South Main Street and farther away from the residential community to the West. This should help decrease the overall impact on those residents. "See attached color perspectives."

Staff Recommendation:

Staff recommends a non-favorable recommendation to the Board of Appeals, for a variance to consolidating the three buildings into one due to the residential development to the West, in addition to increasing the total floors from 2 to 3 floors with the consolidated building.

The staff recommendation is that the owner of the property go through the rezoning of all three lots as part of the 2023 Master Plan rezoning request. The current Zoning of the three parcels is LC - Limited Commercial; staff will recommend that the parcels are rezoned to CC - Community Commercial for the front parcel and the rear two parcels to NP - Neighborhood Professional. This will create a zoning buffer between Commercial use the Residential use. This will also allow for the building as proposed to be erected within the code for the CC-zoned property.

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May 24, 2023

FIRST CLASS U.S. MAIL and
E-MAIL TRANSMISSION

Peter Helt, Chairperson
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Town of Mount Airy
P.O. Box 50
Mount Airy, Maryland 21771

John Breeding, Director of Planning, Zoning Administrator
Town of Mount Airy
P.O. Box 50
Mount Airy, Maryland 21771

Re: Mount Airy Board of Zoning Appeals
Case No. MA-A-10-05
Request for Extension

Dear Chairperson Helt and Administrator Breeding:

Please accept this letter as a request for an extension of the approval of the special exception for elderly housing at Wildwood Park Section VII as granted in the original Decision dated August 31, 2010, a copy of which is attached hereto for your ease of reference; and extended by the Decisions dated August 1, 2011, July 29, 2014, July 18, 2017 and December 16, 2020. A copy of the most recent extension dated December 16, 2020 is also enclosed herewith for your ease of reference.

In keeping with the prior extensions issued pursuant to Mount Airy Code Section 112-62(A)(2), the Applicant seeks an extension for an additional three (3) years from July 31, 2023 through July 31, 2026. The Applicant has diligently pursued approval for this project as Town regulations have permitted. The Town's files will reflect that since the time of approval and the moderating of the housing recession: (1) the Town adopted its long-

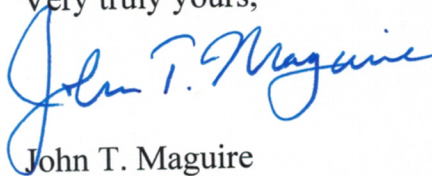
JOHN T. MAGUIRE, ESQUIRE

Peter Helt, Chairperson
John Breeding, Director, Planning and Zoning
May 24, 2023
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awaited master plan in 2014; (2) the subject property was rezoned to the R3 District zoning classification as part of the attendant comprehensive rezoning in 2015; (3) water capacity became available in early 2016 pursuant to the Town's cyclical review and updated allocation policy; (4) concept site plan review was then allowed to resume; (5) the concept site plan was conditionally approved by unanimous vote of the Planning Commission on August 9, 2016; (6) processing of the final site plan has been held up due to the application of stringent stormwater management criteria related to the condition sought by the Planning Commission to install an access drive onto Ridge Avenue; (7) the Applicant participated in a joint meeting of Town and County officials on April 30, 2019 to explore possible solutions which have yet to be resolved; (8) the proposed use for elderly housing at this site remains consistent with the adjacent elderly housing development in Wildwood Park; and (9) the criteria in the Code underlying the zoning approval of the special exception has not changed.

Please advise this office if you will require anything further to process this request for extension. I would appreciate your efforts to schedule this matter sufficiently in advance of the current expiration date of July 31, 2023.

Very truly yours,



John T. Maguire

JTM/pae
Enclosure

cc: Michael Berman, President (via e-mail transmission, no enclosures)